

**BEFORE THE  
MEDICAL BOARD OF CALIFORNIA  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

**In the Matter of the Petition for )  
Reinstatement of Revoked Certificate of: )**

**MASOOD R. SAYYAH, M.D. )**

**Case No. 8002014008913**

**Physician's and Surgeon's )  
Certificate No. A 42949 )**

**Petitioner )  
\_\_\_\_\_ )**


**DECISION AND ORDER**

**The attached Proposed Decision is hereby adopted as the Decision and Order of the Medical Board of California, Department of Consumer Affairs, State of California.**

**This Decision shall become effective at 5:00 p.m. on September 14, 2016.**

**IT IS SO ORDERED August 15, 2016.**

**MEDICAL BOARD OF CALIFORNIA**

By:   
**Howard Krauss, M.D., Chair  
Panel B**

BEFORE THE  
MEDICAL BOARD OF CALIFORNIA  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Petition for Reinstatement of  
Revoked Certificate of:

MASOOD SAYYAH,

Petitioner.

Case No. 800-2014-008913

OAH Case No. 2016021131

**PROPOSED DECISION**

Howard W. Cohen, Administrative Law Judge with the Office of Administrative Hearings, heard this matter on July 11, 2016, in Los Angeles, California.

Petitioner Masood R. Sayyah represented himself.

Brian D. Bill, Deputy Attorney General, appeared under Government Code section 11522.

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on July 11, 2016.

**FACTUAL FINDINGS**

1. Petitioner filed a Petition for Penalty Relief, Reinstatement of Revoked/Suspended Certificate, on September 11, 2014 (Petition).

2. The Medical Board (Board) issued Physician and Surgeon's Certificate Number A 42949 to petitioner on August 4, 1986. Petitioner, born in Iran, obtained his medical degree from the University of Vienna Medical School. He returned to Iran, where he served an internship and then practiced medicine. He immigrated to the United States in 1985, served a residency in neurology and internal medicine at the Veterans Administration Hospital in West Los Angeles, and worked at the Clinica Medica Familiar, a walk-in clinic, and Lincoln Hospital Medical Center in Los Angeles.

3. On June 10, 2003, the Board's Executive Director filed an Accusation against respondent in case number 17-2001-120325. The Accusation alleged that, in 2002, petitioner committed repeated negligent acts constituting simple departures from the standard of care, gross

negligent acts constituting extreme departures from the standard of care, and alteration of medical records with fraudulent intent.

4. The Board revoked petitioner's certificate by a Decision and Order effective February 9, 2004 (February 2004 Order), adopting a Stipulated Settlement and Disciplinary Order (Stipulation). In the Stipulation, petitioner agreed that, at a hearing, complainant could establish a factual basis for one or more of the charges in the Accusation. Petitioner was suspended from the practice of medicine for 15 days, his certificate was revoked, and the revocation was suspended, and petitioner was placed probation for four years on terms and conditions.

5. On December 13, 2005, an Interim Suspension Order issued against petitioner. On December 15, 2005, the Board's Executive Director filed an Accusation and Petition to Revoke Probation against respondent. The Accusation alleged that petitioner demonstrated incompetence in undergoing Phase I and Phase II of the Physician Assessment and Clinical Education (PACE) program, thereby failing to comply with a condition of probation requiring him to complete a clinical training or education program within six months of initial enrollment. The Accusation included a prayer that petitioner's certificate be revoked or suspended, that his probation be revoked and the disciplinary order stayed by the February 2004 Order be imposed, that petitioner's authority to supervise physician's assistants be revoked, suspended, or denied approval, and that costs be imposed.

6. Effective July 24, 2006, the Board adopted as the Decision of the Board a Proposed Decision issued by Administrative Law Judge H. Stuart Waxman on May 26, 2006, revoking petitioner's probation in case number 17-2001-120325 and revoking petitioner's certificate number A 42949. In the Proposed Decision, the Administrative Law Judge found:

28. Although [Petitioner] most likely was in a certain amount of [neck] pain during his participation in PACE, his testimony with respect to that pain must be given limited weight. Preliminarily, [petitioner] never testified that his pain was so debilitating that he was unable to perform on the tests. He testified only that he was "sick" and that he had difficulty with his concentration. Although he believes he should be permitted to re-take the assessments now that his neck feels better, he never once asked for a postponement or deferment of any of the segments in either Phase I or Phase II. Significantly, not one of the six physicians and one nurse practitioner who interacted with him while he was at PACE noticed any sign of pain or discomfort in [petitioner] on even one occasion. In fact, when one of those physicians asked [petitioner] if he felt capable of going forward with one of the segments, [petitioner] answered affirmatively. Only [petitioner] knew how he felt. It was his responsibility to advise the PACE faculty and/or staff if he believed his performance was or would be compromised by his

neck pain. His testimony that it was not his “personality” to complain about his neck pain was not credible in that his complaints of neck pain comprised almost his entire defense at the administrative hearing. In addition, he did complain to some of the PACE personnel. On one occasion, he was given a clipboard to enable him to keep his neck in an upright position, thereby minimizing his discomfort. On the other occasion, he was given the opportunity to postpone the segment.

29. During his physical examination, [petitioner] informed Dr. Pickwell<sup>1</sup> that he was taking his medications for his neck and his diabetes. At that time, he could have also informed her if his pain medications were ineffective or if the pain was particularly severe on that day. Given [petitioner’s] normal range of motion and the absence of objective signs of pain, [Dr.] Pickwell was justified in believing that his two medications were controlling the pain in the cervical spine. . . .

30. [Petitioner’s] claim that PACE was not what he expected it to be, in that he was expecting something akin to a [Continuing Medical Education (CME)] course, was also not credible. [Petitioner] admitted that he read the Stipulated Settlement and Disciplinary Order before he signed it, and he was represented by counsel at the time he entered into that settlement. Condition No. 3 described the nature of the PACE Program. [Petitioner] had no reason to believe it would consist of anything different from that which was described. Yet, despite his knowledge of what to expect and his awareness of his own physical limitations, on January 23, 2004, after he had closed his medical practice, [petitioner] wrote to a Board representative requesting to attend the PACE program. [Petitioner’s] probation monitor was one of the individuals to whom [petitioner] sent a copy of that letter.] (Ex. 3, Tab A, pp. 29-30.)

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7. The ALJ, in his Legal Conclusions, found:

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<sup>1</sup> Sheila Pickwell, Ph.D., C.F.N.P., a member of the PACE faculty, performed a complete health history and physical examination of petitioner. (See Ex. 3, Tab A, p. 9.)

3.h. [Petitioner's] failure to successfully complete the Phase I and II assessments was not based solely on his scores in the various segments. Following a score on the Microcog© so profoundly low that PACE personnel considered the possibility of a software problem, [petitioner] was given the opportunity to repeat the test. The second test rendered a very similar result. Because the test was normed against other physicians of similar age, [petitioner] was asked to undergo a neuropsychological evaluation. The results of that evaluation showed that [petitioner] was impaired to a degree that did not rise to the level of a specific diagnosis such as dementia. However the results did indicate that "the deficits most likely represent a decline from previous functioning."

4. [Petitioner] participated in PACE at three separate times but with very consistent results. This implies that whatever caused his poor performance was not an isolated anomaly, but rather something of consistent and extended duration. [¶] . . . [¶]

6. [Petitioner] failed to establish that he was not functioning normally during his participation in PACE in November 2004, April 2005 and June 2005. . . . The PACE Clinical Competency Committee did not base its decision on limited criteria. It considered all data from every segment of Phases I and II, as well as the methodology and results of the neuropsychological evaluation. The overall results of [petitioner's] PACE assessment demonstrate that his deficits are both global and profound, and that he is presently not safe to engage in the practice of medicine. (Ex. 3, Tab A, p. 32.)

8. Petitioner has not practiced medicine in over 10 years; he testified that he has not petitioned for reinstatement sooner due to family illnesses and other personal difficulties. He testified that he is now healthy and able to practice competently; he would like to work as a primary care physician in a clinic. Petitioner annually attends a three-day continuing medical education course offered by Pri-Med, reads some medical journals, and reads articles on the internet to stay informed on general developments in medicine. He focused much of his testimony on attempting to challenge the basis for the 2006 Decision revoking his probation and his certificate. Petitioner reiterated the same factual arguments he made at the hearing leading to that decision, arguments that were insufficient to prevent the revocation of his probation and revocation of his certificate in the first instance. Petitioner testified that he accepts that he made a mistake, but does not acknowledge any fault in his failure to pass the PACE courses. He has not attended any PACE courses since 2006, at first because of illness in his family, and more recently because he is too nervous during examinations. He testified that he is not nervous when actually treating patients.

9. In support of his petition, respondent submitted character reference letters from Daryoosh Sami, M.D., Gina Danesh, D.O., Cranford L. Scott, M.D., and Mona Tabib, M.D.

10. Dr. Sami and Dr. Danesh are members of petitioner's family. Dr. Sami wrote that petitioner married his niece 25 years ago, that petitioner is "a kind, bright and caring person," and that although petitioner has not practiced medicine lately he has attended "numerous medical conferences" and CME courses. (Ex. 1, Tab A, p. 129.) Dr. Danesh wrote that petitioner, her stepfather for the past 25 years, was and will again be an excellent physician and that he has stayed up to date by attending CME conferences and reading journals and internet articles. (Ex. 1, Tab A, p. 133.) Dr. Danesh also wrote, in a letter dated January 26, 2016, that petitioner is not disabled at this time and may work with no restrictions. (Ex. 4.)<sup>2</sup>

11. Dr. Scott's and Dr. Tabib's letters will not be considered.

a. Dr. Scott, petitioner's former supervisor and medical director at Clinica Medica Familiar and Lincoln Hospital Medical Center from 1994 through 2000, submitted a declaration under penalty of perjury, dated June 20, 2016, withdrawing his letter of support.<sup>3</sup> Dr. Scott withdrew his letter of support after speaking with Sarah Peters, a Special Investigator for the Board, who emailed Dr. Scott petitioner's disciplinary records. Before reviewing those records, Dr. Scott knew of petitioner's prior license discipline, but petitioner had not admitted any wrongdoing. Dr. Scott did not know that petitioner had failed to complete the PACE course. "Based upon the disciplinary history, his performance at the PACE program, and his lengthy time away from the practice of medicine, I cannot support [petitioner's] petition for reinstatement." (Ex. 7.)

b. Dr. Tabib, a family friend of petitioner's for more than 40 years, submitted a declaration under penalty of perjury, dated June 21, 2016, withdrawing her letter of support. Dr. Tabib withdrew her letter of support after speaking with Sean Cogan, an Investigator with the Department of Social Services, who emailed Dr. Tabib petitioner's disciplinary records. Petitioner had not informed her that his certificate had been revoked and she was unaware of the details in the 2005 Accusation. Petitioner had only told her that he was too ill to complete the PACE program.

12. The evidence petitioner offered is not sufficient to warrant reversing the results of

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<sup>2</sup> These letters were admitted under Government Code section 11513, subdivision (d), relating to hearsay evidence. They may be used to supplement or explain other admissible evidence; they may not be used, by themselves, to support a finding of fact where, as here, an objection was timely made.

<sup>3</sup> No timely request for cross-examination was made in response to the proposal to introduce evidence by declaration. (See Gov. Code, § 11514, subd. (a).)

the Board's 2006 Decision revoking petitioner's certificate or to grant his petition for reinstatement. The evidence of petitioner's activities since 2006 does not clearly and convincingly demonstrate that he is safe to practice medicine.

## LEGAL CONCLUSIONS

1. A person whose certificate has been revoked may petition the Board for reinstatement. "The petition shall state any facts as may be required by the board. The petition shall be accompanied by at least two verified recommendations from physicians and surgeons certificated in any state who have personal knowledge of the activities of the petitioner since the disciplinary penalty was imposed." (Bus. & Prof. Code, § 2307, subd. (c).)

2. The administrative law judge hearing the petition "may consider all activities of the petitioner since the disciplinary action was taken, the offense for which the petitioner was disciplined, the petitioner's activities during the time the certificate was in good standing, and the petitioner's rehabilitative efforts, general reputation for truth, and professional ability." (Bus. & Prof. Code, § 2307, subd. (e).) The administrative law judge may recommend reinstating a certificate and imposing probationary terms and conditions. (Bus. & Prof. Code, § 2307, subd. (f).)

3. In a proceeding to reinstate a revoked certificate, the burden rests on the petitioner to prove that he has rehabilitated himself and that he is entitled to have his certificate restored. (*Flanzer v. Bd. of Dental Examiners* (1990) 220 Cal.App.3d 1392, 1398.) A person seeking reinstatement must present strong proof of rehabilitation sufficient to overcome the Board's former adverse determination. (*Hippard v. State Bar of California* (1989) 49 Cal.3d 1084, 1092-1093.) The standard of proof is clear and convincing evidence to a reasonable certainty. (*Id.*; *Housman v. Board of Medical Examiners* (1948) 84 Cal.App.2d 308.)

4. Protection of the public "shall be the highest priority" for the Board and administrative law judges in exercising their disciplinary authority. (Bus. & Prof. Code, § 2229.) An administrative law judge "shall, wherever possible, take action that is calculated to aid in the rehabilitation of the licensee, or where, due to a lack of continuing education or other reasons, restriction on scope of practice is indicated, to order restrictions as are indicated by the evidence." (Bus. & Prof. Code, § 2229, subd. (b).) "Where rehabilitation and protection are inconsistent, protection shall be paramount." (Bus. & Prof. Code, § 2229, subd. (c).)

5. Cause does not exist under Business and Professions Code section 2307 to grant petitioner's request for reinstatement of his certificate, based on Factual Findings 1 through 12.

6. Petitioner failed to make the required showing of rehabilitation. Considering all of petitioner's activities since his certificate was revoked, the offense for which petitioner was disciplined, his activities during the time the certificate was in good standing, and his rehabilitative efforts, general reputation for truth, and professional ability, the record as a whole does not

demonstrate that respondent is now able to practice medicine safely.

ORDER

The petition of Masood Sayyah for reinstatement of his physician's and surgeon's certificate is denied.

DATED: July 21, 2016

DocuSigned by:

*Howard W. Cohen*

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HOWARD W. COHEN  
Administrative Law Judge  
Office of Administrative Hearings